

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2868 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GIRBIRSINGH RANA

Versus

OIL & NATURAL GAS COMMISSION

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Appearance:

MR KH BAXI for Petitioners

MS KJ BRAHMBHATT for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/06/97

ORAL JUDGEMENT

1. The petitioners, in all seven in number, filed this Special Civil Application and prayer has been made for the direction to the respondents to regularise their adhoc service on the post of Auto Fitter (Technician Gr.II) and to give them promotion to the post of Chargeman (Auto) w.e.f. 1-4-1980 and Assistant Engineer (Auto) w.e.f 1-4-1982 with all the consequential benefits

and further directing the respondents to fix the seniority of the petitioners accordingly in the seniority list of Chargeman (Auto) and Assistant Engineer (Auto). Prayer has also been made for grant of interim relief, but the said prayer was not pressed.

2. The petitioners were admittedly promoted purely on adhoc basis for two months or till regularly recruited candidates are made available on the post of Auto Fitter (Technician Gr.II) in the years 1968 and 1969. Their services were regularised on the post of Auto Fitter, (Technician Gr.II) w.e.f. 4-8-1976. Then they have been promoted to the next higher post of Chargeman (Auto) w.e.f. 1-1-1983. The grievance of the petitioners is that their adhoc services i.e. their services from the date of their adhoc appointment till the date of their regularisation of service as Auto Fitter (Technician Gr.II) were not considered for giving them promotion on the post of Chargeman (Auto) w.e.f. 1-4-1980 and Assistant Engineer (Auto) w.e.f. 1-4-1982.

3. The Special Civil Application has been contested by the respondents by filing a detailed reply to the same. Further affidavits have also been filed by both the parties.

4. The counsel for the petitioners contended that it is true that the petitioners were given the adhoc appointment in the year 1968-69, but they were continued on the post for seven years, and as such, the adhoc services should have been taken for the purpose of promotion. It has next been contended that the petitioners though were given the adhoc promotion, but still after the regularly recruited candidates were made available, the respondents allowed them to work on the post of Auto Fitter (Technician Gr.II) for all the years, and as such, their services should have been regularised from the date of their adhoc promotion and not from 4th August, 1976. By counting their regular services from 4th August, 1976, they have been deprived of the benefit of their past services and secondly the earlier promotion to the next higher post of Chargeman (Auto) and further promotion to the post of Assistant Engineer (Auto). The promotional scheme has been introduced by the respondents effective from 1-4-1980, but they could not get the benefits of the same, as their past adhoc services were not taken as qualifying services for promotion under the said promotional scheme.

5. On the other hand, the counsel for the respondents contended that the writ petition suffers from

the vice of delay and laches. The petitioners were regularised on the post of Auto Fitter (Technician Gr.II) w.e.f. 4-8-1976 but they have not made any grievance against their regularisation till 1987, when this Special Civil Application has been filed. It has next been contended that in case the contention of the counsel for the petitioners is accepted and their adhoc services are counted for regularisation then it will affect the seniority of those persons who have already been promoted and given the seniority above them. Those persons have also not been impleaded as party to this Special Civil Application. The provisional seniority list of the Auto Fitters (Technicians Gr.II) showing the position as on 1-4-1979 was prepared and circulated amongst the concerned employees vide office order dated 18-12-1980. None of the petitioners has filed any objection against their placement by treating them to be regularly appointed on the post from 4-8-1976. The petitioner No.1 had filed an objection, but that too was only restricted to his date of birth, which was shown 4-12-1942 instead of 3-12-1942. The provisional seniority list has been finalised on 31st December, 1980 and the petitioners have not challenged that list also. So, the petitioners are estopped from raising any voice against the order under which their services were regularised on the post of Auto Fitter (Technician Gr.II) w.e.f. 4-8-1976. They accepted their position as well as the seniority given to them on that basis. It is urged that the adhoc services cannot be counted for the purpose of eligibility for promotion. It has next been contended that the period during which the petitioners worked on adhoc basis on the promotional post cannot be taken into consideration for qualifying services for promotion to the next higher post. Further contention has been made that the respondents have taken a policy decision not to take into account the adhoc services for the purpose of computing 12 years service under long term promotion policy as circulated vide resolution dated 26th June, 1980.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. Though the preliminary objection raised by the counsel for the respondents are of sufficient substance on merits, but after hearing the counsel for the petitioners, I am satisfied that the petitioners have no case on merits and I do not consider it appropriate to go on the preliminary objections raised by the counsel for the respondents. Admittedly, the petitioners were promoted on adhoc basis and the order of promotion is very specific and clear that it is an adhoc promotion for

two months or till the regularly recruited candidates are made available, whichever is earlier. It is a fortuitous circumstances that despite of the selected candidates made available, the petitioners were continued as adhoc promotees for years together, but it is not the case of the petitioners that they have been regularly promoted on the post. The counsel for the petitioners very fairly conceded that the petitioners were continued on adhoc basis for all these years. Their services were regularised w.e.f.. 4-8-1976. The prayer of the petitioners for regularisation of their services from the date of their adhoc promotion cannot be accepted as the petitioners' counsel has failed to point out any regulation or any resolution or standing order of the respondents which permits for regularisation of the services of the petitioners from the date of their adhoc promotion. The law is settled that the temporary Government servant does not become permanent unless he acquires that capacity by force of any rule or is declared as permanent servant. Reference in this respect may have to the decision of the Apex Court in the case of M.P. Hasta Shilpa Vikas Nigam Ltd. vs. Devendra Kumar Jain & Ors. reported in JT 1995 (1) SC 198. There is a decision of the Hon'ble Supreme Court in the matter of adhoc promotion also and therein it has been held that the adhoc promotee has not acquired any right to hold the post and reference in this respect may have to the decision State of Orissa vs. Dr. Prari Mohan Misra reported in JT 1995 (2) SC 54. As stated earlier, the counsel for the petitioners is unable to point out any rule or regulation or resolution of the Corporation now company, under which the petitioners have become entitled for regularisation of their services from the date of their adhoc promotion. As laid down by the Hon'ble Supreme Court, a temporary Government servant becomes permanent only from the date on which he is declared so, and in the present case, the petitioners have been declared permanent from 4-8-1976. This position has been accepted by the petitioners and in the long term promotion policy their services from the date of adhoc promotion till 4-8-1976 i.e. the adhoc services could not have been counted for the purpose of eligibility of 12 years qualifying service for promotion under the said policy and it has rightly been not counted. The decision of the respondents not to count the adhoc services for the purpose of computing 12 years of service under the long term promotion policy is also not challenged by the petitioners before this Court. Otherwise also, this decision cannot be said to be arbitrary or unreasonable, which calls for interference of this Court. The petitioners have not completed 12 years service as on 1st

April, 1986. Under the Regulations, 1974, the promotion has been provided to the post of Chargeman (Auto) and the eligibility is of six years services. The petitioners have completed six years service in the year 1982, and as such, they have been given the promotion from 1st January, 1983, and no exception can be taken to the same. I do not find any justification in the claim of the petitioners for regularisation of their services from the date of their adhoc promotion, and the further prayer for giving them the promotion by counting their adhoc services under the 12 years eligibility criteria in the long term promotion policy.

8. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

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